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8
9 IN THE UNITED STATES DISTRICT COURT
10
11 FOR THE DISTRICT OF OREGON
12
13 MEDFORD DIVISION
14

15 JOHN ERIC SMITH

16 Plaintiff,

17 v.

18 UNITED STATES OF AMERICA,

19 Defendant.

Case No.

COMPLAINT FOR MEDICAL
NEGLIGENCE

(BENCH TRIAL)

20 Plaintiff alleges:

21 1.

22 This action, brought pursuant to 28 U.S.C. 2672 and 2674, is for medical
23 negligence committed by family nurse practitioners (FNPs), nurses, and other
24 employees at La Clinica del Valley Family Health, a federally funded health care facility
25 in Central Point, Oregon.

26 2.

On November 12 and 22, and on December 3, 16, 19, 23, and 26, of 2013, plaintiff
sought medical treatment at La Clinica, repeatedly complaining of an infection on the
back of his neck.

3.

In failing to diagnose and treat this infection, La Clinica's FNP's, nurses, and other employees, acting within the scope and course of their employment, were negligent in one or more of the following ways:

- a. In failing to heed the history plaintiff gave at his first visit, and repeated on later visits, that in the past he had Methicillin-resistant Staphylococcus aureus (MRSA), and that he had been recently exposed to MRSA;
- b. In ignoring the growing constellation of symptoms pointing to MRSA, including growth of the infected area, and its non-response to the treatment La Clinica was providing;
- c. In giving plaintiff an intermuscular injection of the antibiotic ceftriaxone on December 16, even though this drug is known to be ineffective against MRSA;
- d. In failing at each visit, until December 19 or 23, to culture plaintiff's infection, and then failing to act immediately and properly when the culture revealed MRSA;
- e. In failing to drain the infection until December 23, and then using only a "blunt instrument" rather than a surgical tool, with the result that the attempted drainage was ineffective;
- f. In doing trigger point injections to treat plaintiff's back pain on December 26, failing to comprehend that his back pain was the result of the infection now having spread to his spinal column, and that trigger point injections would have no effect in treating the infection;
- g. In continuing to treat a patient whose condition and needs had exceeded their abilities, skills, and/or training;

- h. In failing to consult adequately (if at all) with medical doctors (inside or outside La Clinica) to obtain their advice, counsel, and judgment on how to treat plaintiff's infection;
- i. In failing to refer plaintiff to a medical doctor (inside or outside La Clinica) having expertise in the treatment of infectious diseases;
- j. In failing to admit plaintiff to a hospital, where he could have received proper medical care, to include (but not be limited to) an infusion of antibiotics that would have been effective against MRSA; and/or
- k. In failing, increasingly over time, to heed plaintiff's growing symptoms of pain, excessive sweating, decreasing functional abilities, falls, and immobility, all of which indicated that the infection that had begun in the back of plaintiff's neck had spread and was becoming a systemic infection that was growing worse hour by hour and day by day.

4.

By the time physicians outside La Clinica properly diagnosed plaintiff's infection, it had grown to an enormous mass that had spread all the way down his spine, from C2 to T10, and required a 16 level decompression surgery to save his life.

5.

As a consequence of La Clinica's negligence, plaintiff has suffered the following injuries:

- a. Permanent spinal cord injuries that have rendered plaintiff an "incomplete quadriplegic," who has no control of his legs and left arm, very little control of his right arm, no control of his bladder or bowels, and has completely lost all sexual functions;
- b. Skin breakdowns and pressure sore injuries, caused by being wheelchair-bound and bed-bound, such that skin areas in regular contact with surrounding

1 surfaces are at continuous high risk for developing painful and life-threatening
2 decubitis ulcers;

3 c. Involuntary spasms and twitching of muscles, causing plaintiff to lose the
4 precious little control he still has of his right upper extremity, causing involuntary
5 spastic urination;

6 d. Postoperative respiratory failure, causing the need for multiple intubations;

7 e. Aspiration pneumonia;

8 f. Adult respiratory distress syndrome, causing the need for a tracheostomy;

9 g. E. coli pneumonia, causing the need for multiple bronchoscopies;

10 h. E. coli lung abscess;

11 i. Clostridium difficile colitis;

12 j. Complex regional pain syndrome of his left upper extremity;

13 k. E. coli septicemia; and

14 l. Recurring hospitalizations and other medical interventions to deal with the
15 above issues.

16 6.

17 To treat these various injuries, plaintiff has incurred significant medical expenses in
18 the past and will need significant on-going treatment over the remaining 35 years of his
19 life expectancy.

20 7.

21 In addition, plaintiff is no longer capable of gainful employment, resulting in
22 significant losses of his future earning capacity.

23 8.

24 In addition, plaintiff, previously a very skilled handyman, is no longer capable of
25 providing household services, such as home repairs, car repairs, yardwork, and the like.
26

1 Now, he must either leave these things undone, or hire someone else to do them,
2 resulting in the complete loss of the value of his household services.

3 9.

4 Finally, and most significantly, plaintiff is now an incomplete quadriplegic, wracked
5 with physical and mental anguish and emotional distress. He feels afraid, vulnerable,
6 and isolated, unable to engage in the normal and usual activities of life. He has lost his
7 independence and mobility; he must endure the humiliation and embarrassment of
8 having others empty his bowels and bladder; he has lost all sexual functions; and he
9 must completely rely upon others to keep him safe. To make up for these massive,
10 severe, and permanent non-economic losses, he should receive full, fair, and just
11 compensation.

12 10.

13 Federal tort claim notice was provided to the Department of Health & Human
14 Services on October 15, 2015. More than six months have passed since that date,
15 during which DHHS has not made any settlement offer. By DHHS's inaction, plaintiff's
16 claim is deemed denied, and he is now allowed to pursue his rights in court under 28
17 U.S.C. 2675 (a).

18 WHEREFORE, plaintiff prays for judgment against defendant United States of
19 America for full, fair, and just compensation for all his economic and non-economic
20 damages, together with costs and disbursements incurred.

21 DATED this 21 day of April, 2016.

22 KELLY L. ANDERSEN, P.C.

23 By  24

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Attorney for Plaintiff